

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 07-2595

United States of America,

Appellee,

v.

Kenneth L. Murray,

Appellant.

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* United States District Court
* for the Western District
* of Missouri.

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* [UNPUBLISHED]

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Submitted: March 12, 2008

Filed: March 21, 2008

Before MURPHY, ARNOLD, and BENTON, Circuit Judges.

PER CURIAM.

Kenneth Murray pled guilty to felon in possession of a firearm and was sentenced to 180 months in prison after being classified as an armed career criminal. He appeals, arguing that this classification was improper because his prior drug convictions should have been treated as a single criminal episode instead of three separate felonies.

The Armed Career Criminal Act provides for enhanced penalties for defendants with three prior convictions for violent felony or drug offenses which were "committed on occasions different from one another." 18 U.S.C. § 924(e). Murray contends that because his prior offenses all involved sales of crack in the same month

to the same buyer, all were charged under the same case number after a single investigation and arrest, and all were sentenced concurrently, they should be treated as a single prior conviction. Murray's argument appears to be derived from the career offender provision in the federal sentencing guidelines, U.S.S.G. § 4B1.1, rather than from § 4B1.4, the guideline under which he was sentenced as an armed career offender. The critical sentencing issue under § 924(e) is whether Murray's prior offenses were committed on different occasions. See United States v. Mason, 440 F.3d 1056, 1057-58 (8th Cir. 2006); United States v. Speakman, 330 F.3d 1080, 1082 (8th Cir. 2003); United States v. McDile, 914 F.2d 1059, 1061 (8th Cir. 1990). Since Murray's offenses were each committed on a different day, the district court¹ did not err in applying U.S.S.G. § 4B1.4 in sentencing him under the Armed Career Criminal Act. The judgment is affirmed. See 8th Cir. R. 47B.

¹The Honorable Nanette K. Laughrey, United States District Judge for the Western District of Missouri.